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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/779,641
Filing Date: February 18, 2004
Appellant(s): ZEIGLER, THEODORE R.

Harold R. Brown
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 22, 2008 appealing from the Office action mailed September 9, 2007.

(1) Real Party in Interest

The real party in interest is the assignee, World Shelters, Inc.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,274,980	Zeigler	1-1994
2002/0189659	Carter	12-2002
6,141,934	Zeigler	11-2000

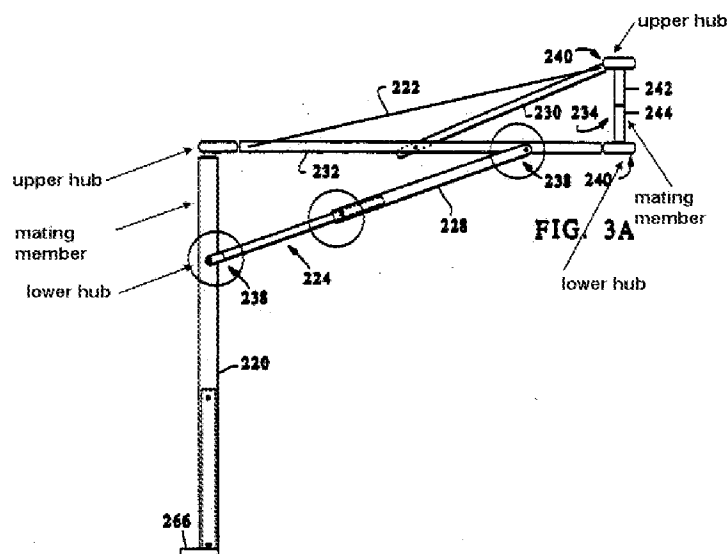
(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

- Claims 1-10 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Zeigler (US 5,274,980) (hereafter know as "Zeigler '980").**
- In Re claim 1, Figures 3A and Column 8 Lines 25-34 of Zeigler '980 disclose
a first strut having (232) a first end and a second end;
a second strut upper portion (230) having a first end and a second end, the first end of the second strut upper portion (230) being pivotably connected to the first strut (232) at an upper strut connection point; and
a second strut lower portion (228) having a first end and a second end, the second end of the second strut lower portion (228) being pivotably connected to the first strut (232) at a lower strut connection point,

wherein the lower strut connection point is between the upper strut connection point and the first end of the first strut (232) and the scissor assembly is movable between a folded position and an expanded position, wherein, when the scissor assembly is in the folded position, the first end of the first strut (232) and the second end of the second strut upper portion (230) are substantially adjacent and the second end of the first strut (232) and the first end of the second strut lower portion (228) are substantially adjacent.

Examiner notes that as shown Figure 3A does not show the orientation of the second strut upper portion with the second strut lower portion as claimed above, however, Column 8 Lines 2-34 of Zeigler '980 disclose placing the second strut upper portion and the second strut lower portion in the same orientation as is claimed.



3. In Re claim 2, Figure 3A of Zeigler '980 further discloses a first end of the first strut (232) and the first end of the second strut lower portion (224, 228) are disposed proximate each

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other and the second end of the first strut (232) and the second end of the second strut upper portion (230) are disposed proximate each other.

4. In Re claim 3, Figure 3A and Column 6 Lines 23-26 of Zeigler '980, further discloses a scissor assembly further comprising a lock (234) for locking at least one of the first end of the first strut and the first end of the second strut lower portion and the second end of the first strut and the second end of the second strut upper portion proximate each other when the scissor assembly is in the expanded position.

5. In Re claim 4, Figure 3A and Column 6 Lines 55-60 of Zeigler '980 further discloses the lock (234) includes an upper hub (240) and a lower hub (240) pivotably connected to the at least one of the first end of the first strut (232) and the first end of the second strut lower portion (224, 228) and the second end of the first strut (232) and the second end of the second strut upper portion (230).

6. In Re claim 5, Figure 3A of Zeigler '980 further discloses an upper hub (240) and the lower hub (240) including mating members (242, 244) for securing the upper hub (240) and the lower hub (240) proximate each other.

7. In Re claim 6, Figure 3A of Zeigler '980 further discloses wherein the first end of the first strut (232) and the first end of the second strut lower portion (224, 228) are locked by a first lock (see note in following sentence) and the second end of the first strut (232) and the second

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end of the second strut upper portion (230) are locked by a second lock (234). Examiner notes that both the first end of the first strut and the first end of the second strut lower portion are considered to be locked based on the reference disclosing each strut pinned to the leg (220).

8. In Re claim 7, Figure 3A of Zeigler '980 further discloses wherein the first lock includes an upper hub and a lower hub pivotably connected to the first end of the first strut (232) and the first end of the second strut lower portion (224, 228), respectively and the second lock includes a lower hub (240) and an upper hub (240) pivotably connected to the second end of the first strut (232) and the second end of the second strut upper portion (230), respectively.

9. In Re claim 8, Figure 3A of Zeigler '980 further discloses an upper hub and the lower hub for each of the first and second locks that including mating members for securing the upper hub and the lower hub proximate each other.

10. In Re claim 9, Figure 3A of Zeigler '980 further discloses a lock (234) including a lower hub (240) and an upper hub (240) pivotably connected to the second end of the first strut (242) and the second end of the second strut upper portion (230), respectively.

11. In Re claim 10, Figure 3A of Zeigler '980 further discloses an upper hub and the lower hub for each of the first and second locks that including mating members for securing the upper hub and the lower hub proximate each other.

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12. In Re claim 15, Figure 3A of Zeigler '980 further discloses the scissor assembly in the expanded condition and the first end of the first strut (232) is disposed vertically above the first end of the second strut lower portion (228), the second end of the second strut upper portion (230) is disposed vertically above the second end of the first strut (232).

13. **Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeigler (US 5,274,980) in view of Carter (US 2002/0189659 A1).**

14. In Re claim 11, Figure 3A of Zeigler has been discussed above and teaches a leg (220) having an upper end and a lower end, the first end of the first strut being pivotably connected to the upper end of the leg. Zeigler '980 does not, however, teach the combination of the first end of the second strut lower portion being pivotably and slidably connected to the leg between the upper end and the lower end. Figure 9 of Carter teaches a first end of the second strut lower portion being pivotably and slidably connected (32) to the leg (24) between the upper end and the lower end. It would have been obvious to one skilled in the art at the time of the invention to modify the leg and strut configuration of Zeigler '980 with the pivotable and slidable connection of Carter in order to allow the tent to be opened to different sizes, while maintaining a rigid structure.

15. In Re claim 12, Figure 3 of Carter further teaches a leg lock (33) for locking the first end of the second strut lower portion proximate the first end of the first strut. It would have been

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obvious to one skilled in the art at the time of the invention to therefore to modify the leg lock of Zeigler '980 with the leg lock of Cater.

16. In Re claim 13, Figure 3A of Zeigler '980 teaches a leg (220) that is telescopic, the upper end being disposed on a first portion of the leg and the lower end being disposed on a second portion of the leg at least partially receivable inside of the first portion of the leg.

17. In Re claim 14, Figure 3A of Zeigler '980 shows a scissor assembly that is in the expanded condition and the leg (220) is vertical, the second end of the second strut upper portion (230) is disposed vertically above the second end of the first strut (232).

18. **Claims 16 and 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeigler (US 5,274,980) in view Zeigler (US 6,141,934) (hereafter know as "Zeigler '934").**

19. In Re claim 16, Figures 2G, 5A and 3A and Column 8 Lines 25-34 of Zeigler '980 teaches the use of two split scissor struts, one of those struts being a right split scissor strut. The split scissor struts of Zeigler '980 teach a split scissor assembly including a first strut (232) having a first end and a second end, a second strut upper portion (230) having a first end and a second end, the first end of the second strut upper portion (230) being pivotably connected to the first strut at an upper strut connection point, a second strut lower portion (224, 228) having a first end and a second end, the second end of the second strut lower portion (224, 228) being

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pivotably connected to the first strut at a lower strut connection point (238), each scissor assembly including a first scissor strut and a second scissor strut and

Zeigler '980 teaches scissor struts (214), however, it does not teach each scissor strut having a first end connected to the second end of the left second strut upper portion and the first end of the left first strut, respectively, and a second end connected to the second end of the right first strut and the first end of the right second strut lower portion, respectively, and the front and back second scissor struts each having a first end connected to the second end of the left first strut and the first end of the left second strut lower portion, respectively, and a second end connected to the second end of the right second strut upper portion and the first end of the right first strut, respectively. Figure 1 and 2B of Zeigler '934 teaches a front, back, left and right scissor strut. Replacing the left and right scissor strut of Zeigler '934 with the split scissor struts of Zeigler '980 would allow the hub to be connected to the second upper strut to be placed at a variety of heights by simply changing the angle and length of the second upper strut. Changing the upper hub height would allow for roofs of differing heights. Thereby resulting in a left and a right split scissor assembly as discussed above in connection with the front and a back scissor assembly as set forth according to claim 16. As such, it would have been obvious to one skilled in the art at the time of the invention to combine the left and a right split scissor assembly of Zeigler '980 with the front and a back scissor assembly of Zeigler '934.

The combination of the Zeigler '934 and Zeigler '980 would then result in both the left and the right split scissor assembly, the split scissor assembly being movable between a split scissor folded position and a split scissor expanded position, wherein, when the split scissor assembly is in the split scissor folded position, the first end of the first strut (232) and the second

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end of the second strut upper portion (230) are substantially adjacent and the second end of the first strut (232) and the first end of the second strut lower portion (224, 228) are substantially adjacent.

Examiner notes that as shown Figure 3A does not show the orientation of the second strut upper portion with the second strut lower portion as claimed above, however, Column 8 Lines 2-34 of Zeigler '980 disclose placing the second strut upper portion and the second strut lower portion in the same orientation as is claimed.

20. In Re claim 18, the combination of Zeigler '980 and Zeigler '934 as discussed in claim 16, teaches the front and the back scissor assembly, the scissor assembly is movable between a scissor folded position in which the first end of the first scissor strut and the second end of the second scissor strut are substantially adjacent and the second end of the first scissor strut and the first end of the second scissor strut are substantially adjacent, and a scissor expanded position.

21. In Re claim 19, the combination of Zeigler '980 and Zeigler '934 as discussed in claim 16, teaches the front and the back scissor assembly, the scissor assembly is movable between a scissor folded position in which the first end of the first scissor strut and the second end of the second scissor strut are substantially adjacent and the second end of the first scissor strut and the first end of the second scissor strut are substantially adjacent, and a scissor expanded position.

22. In Re claim 20, the combination of Zeigler '980 and Zeigler '934 as discussed in claim 16, teaches the first and second scissor struts being pivotably connected to each other.

23. In Re claim 21, Figures 1A, 2G, 5A and 3A and Column 8 Lines 25-34 of Zeigler '980 teaches a plurality of expandable and collapsible structural modules, each module comprising a scissor assembly, each split scissor assembly including a first strut (232) having a first end and a second end, a second strut upper portion (230) having a first end and a second end, the first end of the second strut upper portion being pivotably connected to the first strut (232) at an upper strut connection point, a second strut lower portion (224,228) having a first end and a second end, the second end of the second strut lower portion being pivotably connected to the first strut at a lower strut connection point (238) and

Zeigler '980 also teaches the use of scissor struts (214), however, it does not teach each strut having a front and a back scissor assembly, each scissor assembly including a first scissor strut and a second scissor strut, the front and back first scissor struts each having a first end connected to the second end of the left second strut upper portion and the first end of the left first strut, respectively, and a second end connected to the second end of the right first strut and the first end of the right second strut lower portion, respectively, and the front and back second scissor struts each having a first end connected to the second end of the left first strut and the first end of the left second strut lower portion, respectively, and a second end connected to the second end of the right second strut upper portion and the first end of the right first strut, wherein, for at least one pair of the modules, the modules are connected to one another in that a second end of a second strut upper portion and a second end of a first strut of a left split scissor assembly of one module is connected to a second strut upper portion and a second end of a first strut of a right split scissor assembly of another module. Figure 1 and 2B of Zeigler '934 teaches

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a front, back, left and right scissor strut. Replacing the left and right scissor strut of Zeigler '934 with the split scissor struts of Zeigler '980 would allow the hub connected to the second upper strut to be placed at a variety of heights by simply changing the angle and length of the second upper strut. Changing the upper hub height would allow for roofs of differing heights. Thereby resulting in a left and a right split scissor assembly as discussed above in connection with the front and a back scissor assembly as set forth according to claim 16. Thereby resulting in a left and a right split scissor assembly as discussed above in connection with the front and a back scissor assembly as set forth according to claim. Furthermore combining the scissor strut of Zeigler '934 with the structural modules of Zeigler '980 as shown in Figure 1A would result in at least one pair of the modules being connected to one another in that a second end of a second strut upper portion and a second end of a first strut of a left split scissor assembly of one module is connected to a second strut upper portion and a second end of a first strut of a right split scissor assembly of another module. It therefore, would have been obvious to one skilled in the art at the time of the invention to combine the collapsible structural module of Zeigler '980 with the front and back scissor assembly of Zeigler '934 to allow for varying heights.

wherein, for both the left and the right split scissor assembly, the split scissor assembly is movable between a split scissor folded position and a split scissor expanded position, wherein, when the split scissor assembly is in the split scissor folded position, the first end of the first strut (232) and the second end of the second strut upper portion (230) are substantially adjacent and the second end of the first strut (232) and the first end of the second strut lower portion (224, 228) are substantially adjacent.

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Examiner notes that as shown Figure 3A does not show the orientation of the second strut upper portion with the second strut lower portion as claimed above, however, Column 8 Lines 2-34 of Zeigler '980 disclose placing the second strut upper portion and the second strut lower portion in the same orientation as is claimed.

24. In Re claim 22, the combination of Zeigler '980 and Zeigler '934 as discussed in claim 21, teaches a left split scissor assembly of one module is a right split scissor assembly of another module.

25. In Re claim 23, the combination of Zeigler '980 and Zeigler '934 as discussed in claim 21, teaches at least one pair of the modules being connected to one another in that a front scissor of one module is a front scissor of another module.

26. In Re claim 24, the combination of Zeigler '980 and Zeigler '934 as discussed in claim 21, teaches at least one pair of the modules being connected to one another in that a front scissor of one module is a front scissor of another module.

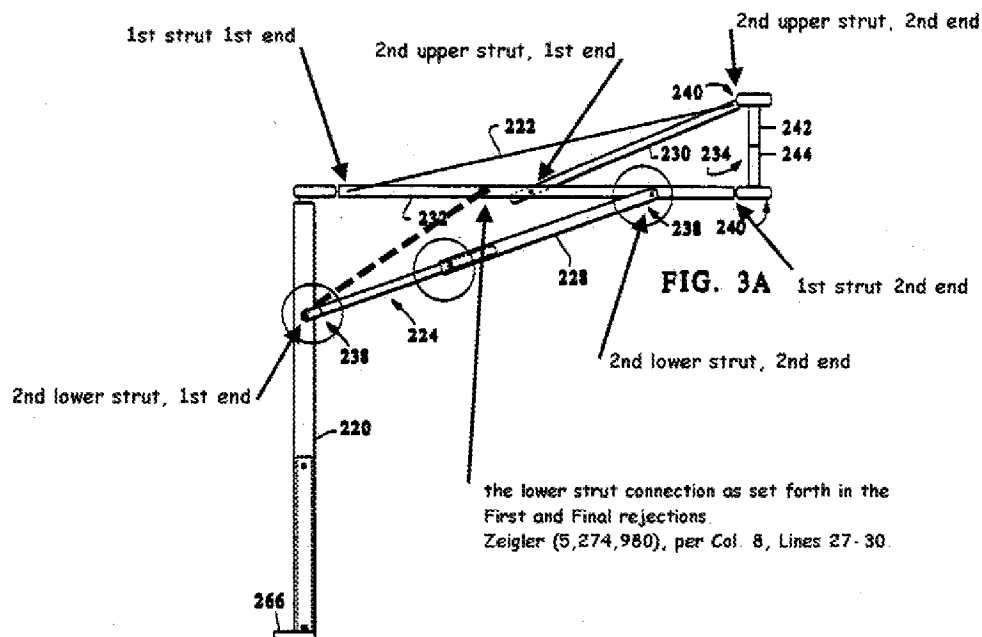
(10) Response to Argument

A. Claims 1-10 and 15 are anticipated by Zeigler '980.

I. Appellant has set forth an analysis that is contrary to the Official Rejections.

The Appellant has mistakenly placed the first end of the first strut and the second end of the first strut in opposite locations as compared to the Official Action. The rejections as provided were based on the reasoning as provided in the figure below.

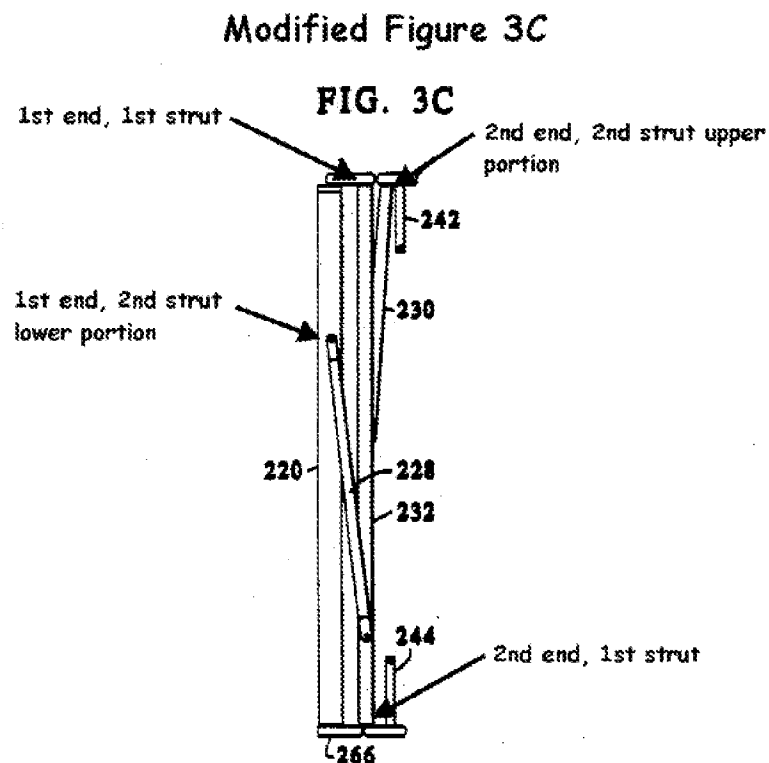
Modified Figure 3A



Here the struts are laid out in accordance with the rejections previously presented. The figure above has been modified with a dashed line that is intended to illustrate the claim limitation of “wherein the lower strut connection point is between the upper strut connection

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point.” Such an interpretation was set forth in paragraph 3 and 14 of the First Office Action and paragraph 22 of the Final Office Action. The above interpretation was inadvertently omitted from paragraph 3 in the Final Rejection. This orientation was also discussed at length during the interview with Mr. Harold Brown on May 7, 2008. The orientation of the connection point as claimed is disclosed in Zeigler ‘980 in Column 8, Lines 27-30. The resulting folded structure would then be as depicted below.



As shown above the first end of the first strut is substantially adjacent the second end of the second strut upper portion, as well are the second end of the first strut and the first end second strut lower portion. In none of the orientations described above are they shown to be "at opposite ends."

In Modified Figure 3C above the first end of the first strut is clearly substantially adjacent the second end of the second strut upper portion, as they are in the same folded orientation as Figure 2A of the present invention.

II. The second end of the first strut and the first end second strut lower portion, as illustrated in Modified Figure 3C above, are substantially adjacent.

“Adjacent” is a broad term known to one of ordinary skill in the art to encompass a variety of distances between two objects, it is more inclusive than “side by side”. *Ex parte Appleldorn* 159 USPQ 791. Additionally, the term "substantially" "is a broad term." *In re Nehrenberg*, 280 F.2d 161, 126 USPQ 383 (CCPA 1960), *see also* MPEP 2173.05(b)(D).

One of ordinary skill in the art appreciates that “adjacent” is a broad term that is relative to what is being compared. Adjacent would be properly used when comparing two cities separated my miles. Likewise, two sheets of paper that are placed upon each other would be adjacent. Adjacent, while not indefinite, without a relative defining limitation allows for a broad interpretation.

In following MPEP 2111, it is clear that Zeigler ‘980 properly anticipates the claimed limitations of the second end of the first strut and the first end second strut lower portion being “substantially adjacent.”

B. The analysis as provided by the Appellant yields the appropriate struts being "substantially adjacent" to each other when in the folded position.

I. As established above, substantially adjacent is a broad term and in the absence of any relative defining limit, it is to be interpreted broadly.

In addressing Appellant's arguments and analysis of the rejection, the Examiner is of the opinion that if one were to apply Ziegler '980 as Appellant has, the struts at issue would be "substantially adjacent." "The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction 'in light of the specification as it would be interpreted by one of ordinary skill in the art.'" *In re Am. Acad. of Sci. Tech. Ctr.*, 70 USPQ2d 1827, *see also* MPEP 2111.

A proper interpretation of "substantially adjacent" has been set forth above in paragraph A. II. Undoubtedly it is a broad term and is to be interpreted as such. Appellant has not provided any limitations within the claims that define the relativity of the struts and their position to each other such that when taking broadest reasonable interpretation one of ordinary skill in the art would not be prevented in concluding that Ziegler '980 anticipates the claims at issue. Therefore, it is clear that the first end of the first strut is substantially adjacent the second of the second strut upper portion, as are the second end of the first strut and the first end second strut lower portion.

II. Appellant is improperly importing limitations from the specification into the claims.

a. Appellant's argument that "substantially adjacent" excludes "at opposite ends" is improper.

When evaluating the broadest reasonable interpretation of a claim it must be consistent with the interpretation that those skilled in the art would reach. MPEP 2111. In this instance, "at opposite ends" is a phrase not contained within the claims nor the specification and therefore does not exclude placement at opposite ends. Since the claims do not contain any relative defining limitation as to what is adjacent and what is not, the claims are open to broad interpretation. Therefore, interpreting the claims based upon the broadest reasonable interpretation, one of ordinary skill can properly conclude that the specific struts at issue of Zeigler '980, when in the folded position would be substantially adjacent.

b. Appellant's attempt to include the definition of "proximate" within the claims is improper.

Appellant is imparting the limitation of proximate as defined by the specification into the claim limitations as a manner of offering relativity to the term "substantially adjacent." "Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim." *Superguide Corp. v. DirecTV Enterprises, Inc.*, 69 USPQ2d 1865. See also MPEP 2111.01(II).

“An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s).” See *In re Paulsen*, 31 USPQ2d 1671. An “inventor may define specific terms used to describe invention, but must do so ‘with reasonable clarity, deliberateness, and precision’ and, if done, must ‘set out his uncommon definition in some manner within the patent disclosure’ so as to give one of ordinary skill in the art notice of the change” in meaning.” *Intellicall, Inc. v. Phonometrics, Inc.*, 21 USPQ2d 1383, *see also* MPEP 2111.01(IV.).

Here the definition that is found within the specification is only to be imported as a limitation if it is set forth with “with reasonable clarity, deliberateness, and precision.” Under this standard, Appellant has failed to properly draft language that makes clear the term is to be defined within the claims in the same manner as it is in the specification. Applicant points to paragraph [0023] in their Appeal Brief, which states; “[p]roximate, **in the sense used here**, means that the strut ends are close but not necessarily adjacent to one another and is meant to contrast with the situation where the strut ends are particularly remote.”

This passage does not state “with reasonable clarity, deliberateness, and precision” that the definition of proximity above is to be imported into the claims of the present application. Ambiguity arises in the language “[p]roximate, in the sense used here.” This particular paragraph is in reference to Figures 2A and 2B which are one of several different embodiments contained within the application. See paragraphs [0011]-[0019] of the specification. Based upon the language “proximate” is defined for that particular embodiment only, and thus not necessarily applied to all embodiments, making it improper to import the limitation into the

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claims. Even if the definition was intended to be applied to the entire application and thus imparted to the claims it was not done so “with reasonable clarity, deliberateness, and precision.” Since this specific definition of proximate used to establish the relative layout of substantially adjacent was not do so as to give one of ordinary skill in the art notice of the change it cannot be imported into the claims.

Accordingly, Appellants arguments directing that proximate is greater than substantially adjacent is improper. In view of the above analysis it is clear that Zeigler ‘980 anticipates claims 1-10 and 15.

C. Claims 11-14 are unpatentable over Zeigler ‘980 in view of Carter (US 2002/0189659 A1).

Claims 11-14 stand rejected on the base reference of Zeigler ‘980 and combined with Carter. Zeigler ‘980 provides for the features of claim 1 from which claims 11-14 depend. The arguments provided by the Applicant do not overcome the rejection of claim 1. The reasons for combining Zeigler '980 and Carter have been set forth above, rendering the claims unpatentable.

D. Claims 16 and 18-24 are unpatentable over Zeigler ‘980 in view Zeigler (US 6,141,934) (hereafter know as “Zeigler ‘934”).

As stated by Appellant, independent claims 16 and 21 include generally the same structure for which claim 1 was rejected for. The arguments provided by the Applicant do not overcome the rejection of claim 1, nor claims 16 and 21 which include the same structure rejected on the same basis. The reasons for combining Zeigler '980 and Zeigler ‘934 have been set forth above,

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rendering the claims unpatentable. Accordingly claims 16 and 18-24 are unpatentable over Zeigler '980 in view of Zeigler '934.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Anthony Bartosik /

Examiner, Art Unit 3635

/Richard E. Chilcot, Jr./

Supervisory Patent Examiner, Art Unit 3635

Conferees:

Brian Glessner /BG/

/R. E. C./

Supervisory Patent Examiner, Art Unit 3635